

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY LEE ALLEN,  
Plaintiff,

v.

SACRAMENTO COUNTY JAIL  
MEDICAL STAFF,  
Defendant.

No. 2:21-CV-00870-CKD P

ORDER

Plaintiff is a county inmate proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302. Plaintiff's first amended complaint is before the court for screening.

**I. Screening Standard**

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact.

1 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
 2 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
 3 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
 4 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
 5 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
 6 Cir. 1989); Franklin, 745 F.2d at 1227.

7 A complaint, or portion thereof, should only be dismissed for failure to state a claim upon  
 8 which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in  
 9 support of the claim or claims that would entitle him to relief. Hishon v. King & Spalding, 467  
 10 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer v. Roosevelt  
 11 Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under  
 12 this standard, the court must accept as true the allegations of the complaint in question, Hospital  
 13 Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light  
 14 most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor, Jenkins v.  
 15 McKeithen, 395 U.S. 411, 421 (1969).

## 16 **II. Allegations in Amended Complaint**

17 In a one page amended complaint, plaintiff alleges that his Eighth and Fourteenth  
 18 Amendment rights have been violated due to neglectful and improper medical care, but he does  
 19 not have the specific names of the persons who are responsible.

## 20 **III. Legal Standards**

### 21 **A. Linkage Requirement**

22 The civil rights statute requires that there be an actual connection or link between the  
 23 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See  
 24 Monell v. Department of Social Services, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362  
 25 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation of a  
 26 constitutional right, within the meaning of section 1983, if he does an affirmative act, participates  
 27 in another's affirmative acts or omits to perform an act which he is legally required to do that  
 28 causes the deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th

1 Cir. 1978) (citation omitted). In order to state a claim for relief under section 1983, plaintiff must  
 2 link each named defendant with some affirmative act or omission that demonstrates a violation of  
 3 plaintiff's federal rights.

#### 4 **B. Deliberate Indifference**

5 Denial or delay of medical care for a prisoner's serious medical needs may constitute a  
 6 violation of the prisoner's Eighth and Fourteenth Amendment rights. Estelle v. Gamble, 429 U.S.  
 7 97, 104-05 (1976). An individual is liable for such a violation only when the individual is  
 8 deliberately indifferent to a prisoner's serious medical needs. Id.; see Jett v. Penner, 439 F.3d  
 9 1091, 1096 (9th Cir. 2006); Hallett v. Morgan, 296 F.3d 732, 744 (9th Cir. 2002); Lopez v.  
 10 Smith, 203 F.3d 1122, 1131-32 (9th Cir. 2000).

11 In the Ninth Circuit, the test for deliberate indifference consists of two parts. Jett, 439  
 12 F.3d at 1096, citing McGuckin v. Smith, 974 F.2d 1050 (9th Cir. 1991), overruled on other  
 13 grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc). First, the  
 14 plaintiff must show a "serious medical need" by demonstrating that "failure to treat a prisoner's  
 15 condition could result in further significant injury or the 'unnecessary and wanton infliction of  
 16 pain.'" Id., citing Estelle, 429 U.S. at 104. "Examples of serious medical needs include '[t]he  
 17 existence of an injury that a reasonable doctor or patient would find important and worthy of  
 18 comment or treatment; the presence of a medical condition that significantly affects an  
 19 individual's daily activities; or the existence of chronic and substantial pain.'" Lopez, 203 F. 3d  
 20 at 1131-1132, citing McGuckin, 974 F.2d at 1059-60.

21 Second, the plaintiff must show the defendant's response to the need was deliberately  
 22 indifferent. Jett, 439 F.3d at 1096. This second prong is satisfied by showing (a) a purposeful act  
 23 or failure to respond to a prisoner's pain or possible medical need and (b) harm caused by the  
 24 indifference. Id. Under this standard, the prison official must not only "be aware of facts from  
 25 which the inference could be drawn that a substantial risk of serious harm exists," but that person  
 26 "must also draw the inference." Farmer v. Brennan, 511 U.S. 825, 837 (1994). This "subjective  
 27 approach" focuses only "on what a defendant's mental attitude actually was." Id. at 839. A  
 28 showing of merely negligent medical care is not enough to establish a constitutional violation.

1 Frost v. Agnos, 152 F.3d 1124, 1130 (9th Cir. 1998), citing Estelle, 429 U.S. at 105-106. A  
2 difference of opinion about the proper course of treatment is not deliberate indifference, nor does  
3 a dispute between a prisoner and prison officials over the necessity for or extent of medical  
4 treatment amount to a constitutional violation. See, e.g., Toguchi v. Chung, 391 F.3d 1051, 1058  
5 (9th Cir. 2004); Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989). Furthermore, mere delay of  
6 medical treatment, “without more, is insufficient to state a claim of deliberate medical  
7 indifference.” Shapley v. Nev. Bd. of State Prison Comm’rs, 766 F.2d 404, 407 (9th Cir. 1985).  
8 Where a prisoner alleges that delay of medical treatment evinces deliberate indifference, the  
9 prisoner must show that the delay caused “significant harm and that Defendants should have  
10 known this to be the case.” Hallett, 296 F.3d at 745-46; see McGuckin, 974 F.2d at 1060.

#### 11 **IV. Analysis**

12 The court finds the allegations in plaintiff’s amended complaint so vague and conclusory  
13 that it is unable to determine whether the current action is frivolous or fails to state a claim for  
14 relief. Plaintiff must identify individual defendants by name and allege with at least some degree  
15 of particularity overt acts which defendants engaged in that support plaintiff’s claim. Id. For all  
16 these reasons, the amended complaint must be dismissed. The court will, however, grant leave to  
17 file a second amended complaint.

18 If plaintiff chooses to file a second amended complaint, plaintiff must demonstrate how  
19 the conditions complained of have resulted in a deprivation of plaintiff’s federal constitutional or  
20 statutory rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the second amended  
21 complaint must allege in specific terms how each named defendant is involved. There can be no  
22 liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a  
23 defendant’s actions and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v.  
24 Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir.  
25 1978). Furthermore, vague and conclusory allegations of official participation in civil rights  
26 violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

27 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to  
28 make plaintiff’s second amended complaint complete. Local Rule 220 requires that an amended

1 complaint be complete in itself without reference to any prior pleading. This is because, as a  
2 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375  
3 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files a second amended complaint, the original  
4 pleading no longer serves any function in the case. Therefore, in a second amended complaint, as  
5 in an original complaint, each claim and the involvement of each defendant must be sufficiently  
6 alleged.

7 In accordance with the above, IT IS HEREBY ORDERED that:

8 1. Plaintiff's amended complaint is dismissed; and

9 2. Plaintiff is granted thirty days from the date of service of this order to file a second  
10 amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules  
11 of Civil Procedure, and the Local Rules of Practice; the second amended complaint must bear the  
12 docket number assigned this case and must be labeled "Second Amended Complaint"; plaintiff  
13 must file an original and two copies of the second amended complaint; failure to file a second  
14 amended complaint in accordance with this order will result in a recommendation that this action  
15 be dismissed.

16 Dated: November 8, 2021



CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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